



17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236
Website Address: www.morgan-hill.ca.gov

PLANNING COMMISSION MEETING MINUTES

REGULAR MEETING

FEBRUARY 14, 2012

PRESENT: Benich, Dommer, Moniz, Mueller, Tanda, Koepp-Baker, McKay

ABSENT: None

LATE: None

STAFF: Assistant City Manager (ACM) Little, Staff Planner (SP) Rowe, Senior Planner (SP) Linder and Development Services Technician (DST) Bassett

Chair Benich called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

DECLARATION OF POSTING OF AGENDA

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

OPPORTUNITY FOR PUBLIC COMMENT

Chair Benich opened, and then closed, the floor to public comment for matters not appearing on the agenda, as none were in attendance indicating a wish to address such matters.

ORDERS OF THE DAY No changes.

MINUTES:

January 10, 2012 COMMISSIONERS MUELLER AND MONIZ MOTIONED TO APPROVE THE JANUARY 10, 2012 MINUTES

THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.

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**January 24, 2012 COMMISSIONERS MUELLER AND DOMMER MOTIONED TO APPROVE
THE JANUARY 24, 2012 MINUTES:**

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE: AYES:
UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**PUBLIC
HEARINGS:**

**1) SUBDIVISION,
SD-11-13: SAN
GABRIEL-MH
DOS:**

A request for approval of a 34-lot subdivision of a 7.2 acre site located on the west side of San Gabriel Ave. between San Pedro Ave. and Barrett Ave. The proposed subdivision represents phases 2-4 of the 52-unit Rose Garden/Lone Oak Farm development. The project area is zoned R-1 7,000/PD Single Family Precise development zoning district. (APN 817-76-019, 021 & 022)

Linder presented her staff report.

Benich: Obviously, it would make more sense for the existing HOA to include the new lots. Is there any way to prevent the new phases from being excluded from the current HOA?

Linder: My understanding is that we can't force it, due to the time lapse. But the applicant is here and maybe they can answer that.

Mueller: Is there any way to make sure the new HOA can have access to the larger park?

Benich: It seems it would be logical to want to share the cost of the parks maintenance with the new HOA.

Mueller: But the current HOA owns the large park?

Linder: That's my understanding.

Benich opened the floor to public comment.

Pat Costanzo appeared on behalf of the applicant. To address your question on the CC&R's, it is our intent to work with the current HOA and CC&R's to become one. We don't have an automatic right to do that because of time issues, but the 18 homeowners should want us to share in the cost of the maintenance. We will do whatever we can to join the existing HOA, or create a new one. We believe it can be worked out.

Benich: Have you had any discussions with the president of the HOA or any of the board members?

Costanzo: Not the board members, but we have talked with Vera Moore of the management association. They seem willing to work with us. It's more the

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corporate attorneys raising the flag right now regarding language.

Benich closed the floor to public comment.

Tanda: Were the homeowners that abutted this development notified of this meeting?

Linder: Yes, we sent notices to property owners within 300 feet.

Tanda: Did any of them contact you?

Linder: No.

**COMMISSIONERS MUELLER AND MONIZ MOTIONED TO APPROVE
THE TENTATIVE MAP**

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

2) USE PERMIT,
UP-11-06:
MONTEREY-
AZAR:

A request for approval of a conditional use permit to operate a restaurant serving alcohol (ABC Type 47 license: On-Sale General for Bona Fide Public Eating Place). A conditional use permit is required per the Downtown Specific Plan for a bar ancillary to a restaurant. The proposed use is in an existing building located at 17500 Monterey Rd (APN 726-14-048) in a Central Business District zone. The project is exempt from an environmental assessment per Section 15301, Existing Facilities, of the CEQA guidelines.

Rowe presented his staff report.

Dommer: So the property that is immediately to the northwest is not public parking?

Rowe: That is correct. It was once a building but they never rebuilt it after the (1984) earthquake.

McKay: As part of this requirement to serve food in a drinking establishment, does that mean they have to serve food all hours that they are serving alcohol?

Rowe: Not necessarily. A lot of restaurants will offer full meal service until 9:00 or 10:00 pm and then offer appetizers after that. The requirement is that at least 50 percent of the gross receipts have to come from food sales—they cannot be predominantly a bar.

Benich opened the floor to public comment.

Scott Zazueta appeared on behalf of the project to answer questions: My client intends to serve food all hours of operation.

Mueller: There will be a full kitchen available until 1:00 a.m?

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Zazueta: Yes.

Benich: Under the hours of operation, it seems you might want to give yourselves more flexibility by asking for hours earlier than 12:00 pm to start. That's a little late.

Zazueta: We have discussed that and we agree with you. We'd like to expand the hours to give prep time and to allow for special events.

Mueller: So we could make the start time 11:00 a.m. every day.

Koepp-Baker: Is 10:00 pm late enough, or would you like it to be 11:00 p.m. on weekdays?

Tanda: Would you leave the restaurant open—not just the bar—until 1:00 a.m. on weekends, so that families could be there?

Zazueta: That is the intent.

Benich closed the floor to public comment.

Mueller: My only caution is that one of the reasons this is a conditional use is to give the city a tool for control. So maybe it's not a good idea to extend the hours until later at night.

Koepp-Baker: What do similar downtown businesses have as their hours of operation?

Rowe: I can report that establishments that we've had to closely monitor because of problems, we've imposed an 11:00 p.m. closing time.

**COMMISSIONERS MONIZ AND KOEPP-BAKER MOTIONED TO
APPROVE THE CUP WITH MODIFIED HOURS OF 11:00 AM TO 11:00
PM ON WEEKDAYS AND 11:00 AM to 1:00 AM ON FRIDAY AND
SATURDAY**

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**OTHER
BUSINESS:**

John Moniz recused himself from the floor at 7:34 p.m.

**3)AWARD AND
DISTRIBUTION
OF RESIDENTIAL
DEVELOPMENT
CONTROL
SYSTEM (RDCS)**

Rowe presented his staff report.

Benich: If the Barrett-Khanna project is a 28-unit project, why are we only giving them 27 allocations?

Rowe: Because they get a credit for replacement of a dwelling that already exists on

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BUILDING

ALLOTMENTS:

the site.

Mueller: If Borello really only wants 10 in the first year and 10 in the second, what if we took the 9 extra and gave some to Milano?

Rowe: They requested 20 but said they could get by with 10 and 10.

Mueller: Borello hasn't started building yet, and they already have a fair amount of allocations. Realistically, they're going to be competing for 10 years. Giving those extra allotments would help a builder that's already actively building.

Benich opened the floor to public comment.

John Telfer appeared on behalf of the Del Monte-Blackwell (MC-11-12) project: KB Home is in the process of acquiring the project. To know that the project is entirely allocated is very important to them and so they appreciate the award.

Chris Borello appeared on behalf of the Cochrane-Borello project: It would work perfectly with our phasing to receive 15 instead of 19 allocations. We currently have 60.

Rowe: I have a recommendation. We could give two to KB Home and two to Main-Morgan Lane/Garcia because their preferred scheduling was to have eight the first year.

Talli Robinson appeared on behalf of KB Home: It would really work better for our phasing to receive 24 allocations the first year.

COMMISSIONERS MUELLER AND KOEPP-BAKER MOTIONED TO APPROVE THE REDISTRIBUTION AS RECOMMENDED BY STAFF

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: MONIZ**

COMMISSIONERS MUELLER AND DOMMER MOTIONED TO APPROVE THE AWARD OF ALLOCATIONS FOR FISCAL YEAR 2013/14 AND PARTIAL ALLOCATIONS FOR FISCAL YEAR 2014/15 WITH MODIFICATIONS

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: MONIZ.**

Benich called for a break at 7:58 pm and reconvened at 8:05 pm. Moniz returned to the floor.

**4) RESIDENTIAL
DEVELOPMENT
CONTROL
SYSTEM (RDCS)
FOURTH**

Rowe presented his staff report and stated that there are eight projects that have been recommended for rescission due to lack of activity, or failure to meet established deadlines. Allocations can only be re-awarded if they are rescinded. Only Council can rescind and then reassign allocations to a next-in-line project.

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QUARTERLY REPORT FOR 2011 INCLUDING REVIEW OF PROJECTS BEHIND SCHEDULE:

Benich: For the E. Main-Ahlin project, if it were to be rescinded what would happen to the remaining 34 units?

Rowe: They will expire June 30, 2012. Then there would be an incremental number of allocations that would go back into the pot and could be given out in subsequent years. If they do expire, there is no possibility to re-award those. The only ones that can be "recycled" are those with commence construction dates of June 30, 2013.

Mueller: So the bank wants to terminate the development agreement on that project?

Little: Yes, the bank is interested in selling the project to a company that wants it as a rental project, which is different than the current project. It doesn't make any sense for them to keep the development agreement in place. The development agreement can be terminated at the request of the City, at the request of the owner of the property, or it can be mutually terminated.

Benich opened the floor to public comment.

Vince Burgos appeared on behalf of the Campoli-E&H project. The reason this project has been delayed is because a study needed to be performed for the railroad track vibration and the creek. We were hoping to coordinate with an adjacent property owner to bring the cost of the study down. That coordination hasn't taken place. We have moved ahead and we're now aggressively moving forward.

Dick Oliver of Divided Homes appeared: Watsonville-Dividend is on the list to be recommended for rescission. We have found that when we applied for this senior project we didn't know a lot about senior homes. We have had to go back and do quite a bit of research. We have met with Terry Linder and the Dahlin Group to redesign the project. We were trying to have that done by January but Dahlin Group was too busy. We are going to be resubmitting with a new site review, site plans, floor plans, etc. that would be suitable for a senior project. We appreciate your patience while we get this going.

Jeff Minarek appeared on behalf of the Chellino Family: We've requested any unused building allocations. We are first in line for any building allocations that can be given us to due to being rescinded from another project. We appreciate any we can be given.

Benich closed the floor to public comment.

Mueller: I find it frustrating that all these RDCS allocations are about to be rescinded, but then these projects are going to turn around and use the 500 exempt units available through Measure A. So then we'll end up with fewer projects that can be built downtown when what we wanted was more.

Benich: It seems we've been pretty lenient with the developers. We have been trying to help them in these difficult times.

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Mueller: There's more that we could have done to keep those projects competitive and not lose their allocations, especially for the E. Main Ahlin and Diana-EAH projects.

Little: But we never had a development agreement with EAH on that site and we don't have any ability to force them to come forward with one.

Koepp-Baker: Why is the bank rejecting the development agreement for E. Main-Ahlin?

Little: Simply because they don't want to fit a new project into the footprint of the design that was approved before. Also, as it's conceived right now, the bank only has control over one piece of land and the other piece that is owned by the City has issues because of the RDA being dissolved.

Mueller: Could you go through the list of projects recommended for rescission one by one?

Rowe:

Del Monte-Giovanni: They have not met specific deadlines set by the last DAA.

Ginger-Custom One: There have been two extensions granted. Since then, there has been no activity.

Monterey-Gunter: There has been no progress on the site contamination and they have not met the deadline to submit the final map.

San Pedro-Alcini: They have not met specific deadlines set by the last DAA.

E. Main-Ahlin: The project has been foreclosed on. The bank wants to terminate the current DAA.

Campoli-E&H: They stated tonight that they plan to pursue the project aggressively.

Monterey-Liou: That project either has to be redesigned or has to move the creek. The very soonest the creek can be moved, according to the Water District, is 2016.

Watsonville-Dividend: That is the senior project Mr. Oliver spoke about earlier.

Mueller: Has the site contamination work been completed on the Monterey-Gunter site?

Rowe: No, there is no progress on that at all. It has been over a year since they talked about getting someone on board to do the remediation, and there has been nothing done.

McKay: Is there a general sense of abandonment on the projects being recommended for rescission?

Rowe: That is the case with some of them. Others cannot move forward because the project won't pencil out. In other words, it will cost them more to build it than they can sell it for. Some had specific deadlines that they were supposed to meet, but they did not meet them.

Mueller: Is the commitment tonight from EAH enough to take them off the list?

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Rowe: You received testimony tonight that they intend to proceed aggressively now that they have decided to take a different direction.

Mueller: There needs to be a commitment on some dates and some milestones set before we send it to City Council.

Rowe: There are already dates in the development schedules. They need to catch up in order to be in good standing. You could say they need to do something before it goes to Council.

Koepp-Baker: Do we have to make a blanket recommendation for rescission as written, or can we except out certain projects? Do we have that option?

Mueller: The only way I can see it working is to insert dates specific for them to perform on.

Rowe: One of the things we're going to be talking about in the next work plan is streamlining the RDCS process. To the extent that we insert additional milestones, it doesn't streamline the process.

Mueller: I understand that, but if you put a couple of dates in there, it puts their feet to the fire.

Koepp-Baker: But do we have the option to except out some of the projects?

Rowe: You can forward a recommendation that Council assign some interim milestones and that if they fail to meet those it would be the basis for an automatic rescission.

Mueller: In terms of Mr. Oliver's project, it's more of a market rate senior project. We don't have any of those. So if we have to learn how to do it, it's worth trying to keep that project alive. But again, I would suggest working with the two applicants that we're thinking of excepting out of the rescission, to establish some interim deadlines.

Koepp-Baker: Can we reopen the public comment period?

Benich reopened the floor to public comment.

Koepp-Baker: When do you plan to resubmit the drawings?

Oliver: We plan to resubmit full architectural drawings, site review and tentative map by March 15th.

Benich closed the floor to public comment.

McKay: Can we just send up the six names and hold back the two that seem to be coming up to speed?

Benich: I don't think we can do that, but we could say that the Planning

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Commission is recommending special consideration on the two projects because they appeared and gave public testimony and then we would recommend that they follow certain milestones that Jim [Rowe] is going to come up with.

Little: The quarterly report reports on the progress of every project. They're not just looking at the eight that seem to be problematic. They're looking at the status of every project. On the two that you're specifically talking about, you can certainly make recommendations.

Koepp-Baker: So we'd just go along with the item one 1 recommendation, which is approve the RDSCS. Then we'd go along with item two with the exception of the two projects that presented evidence of movement.

Rowe: Of the eight recommended, you're saying that Watsonville-Dividend and Campoli-E&H are not being recommended for rescission but that the Council incorporate some interim milestones.

Mueller: I'd like to know for sure on the Monterey-Gunter site if they're making progress to resolve the contamination.

Rowe: The planner I spoke with said there is no progress on any remediation work.

Mueller: Could you make a call to the applicant? The conversation that I had with the applicant a year ago was that they had been through the process once and the vendor did not do it right, so they were trying to do it again.

Little: Subsequently, we have not seen anything happen.

Rowe: We'll check on that.

COMMISSIONERS MUELLER AND TANDA MOTIONED TO RECOMMEND REFERRAL OF THE RDSCS 4TH QUARTERLY REPORT TO CITY COUNCIL

**THE MOTION PASSED (7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

COMMISSIONERS MUELLER AND TANDA MOTIONED TO RECOMMEND RESCISSION OF THE PROJECTS LISTED WITH THE EXCEPTION OF MONTEREY-GUNTER TO DETERMINE IF ACTIVE REMEDIATION IS BEING PURSUED, AND THE EXCEPTION OF WATSONVILLE-DIVIDEND AND CAMPOLI-EAH BY THE ESTABLISHMENT OF INTERIM MILESTONES

**THE MOTION PASSED(7-0-0-0) WITH THE FOLLOWING VOTE:
AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: NONE.**

**5) APPROVE
WORK PLAN
AND**

Rowe presented his staff report.

Benich: Where would we address how to categorize or define senior projects?

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APPOINTMENT OF PLANNING COMMISSION SUBCOMMITTEE TO REVIEW CHANGES TO THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) EVALUATION CRITERIA:

Rowe: I believe that has already been done.

Mueller: We need to look at collapsing points. That would allow for more points at the top because when too many projects score too closely, it's difficult to award allocations.

Benich: What that says is that the quality of projects has been increasing and developers are getting smarter.

Mueller: Many of the high scoring projects are from larger developers that find it easier to compete because they can afford more. We need to take away some of the low hanging fruit by collapsing items into groups. For that reason, I will volunteer to be on the committee.

McKay: I need to check my schedule, but I would like to volunteer and can I indicate a preference for Thursdays?

Benich opened the floor to public comment.

Dick Oliver appeared: The comment I have is that all of our processing fees have been going up. If some of those fees could be eliminated that would help developers. We also need to make an effort to reduce the complexity, and thus reduce staff time to process, which in turn reduces our fees. So I will volunteer to be on the committee.

Mueller: We have not looked at the per-point fee since the collapse of the housing market. We should look at that. We're taking the same amount of money but the housing market has changed.

Vince Burgos appeared: When you look at the scores in the competition, there are three ways to acquire points: Location, design and purchase points. The easiest thing to streamline would be the purchase points. One way to streamline points would be to make the RDCS narrative easier by creating yes or no answers.

Benich: Would you like to volunteer for the committee?

Burgos: Yes, I would love to do that.

Rowe: We're not appointing tonight. We're just inviting folks who are interested. And these are public meetings so anyone can attend. The recommendation is to direct staff to invite other community representatives to participate in the working group.

ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES

After June, this facility will no longer be available for Council meetings and Commission meetings. When the chambers are moved, the meetings will be held at the Community Cultural Center.

Koepp-Baker: Are we changing nights?

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Rowe: Tuesdays are bingo night, so it will have to be another night. We'll talk about it at the next meeting.

**CITY COUNCIL
REPORTS**

None.

ADJOURNMENT

Noting that there was no further business for the Planning Commission, Chair Benich adjourned the meeting at 9:10 p.m.

MINUTES RECORDED AND TRANSCRIBED BY:

ELIZABETH BASSETT, Development Services Technician